



FEDERAL ELECTION COMMISSION
Washington, DC 20463

JAN 15 2013

Michael Corwin, Treasurer
Independent Source PAC
11024 Montgomery Blvd., NE #128
Albuquerque, NM 87111

RE: MUR 6573

Dear Mr. Corwin:

On May 14, 2012, the Federal Election Commission notified Independent Source PAC and you, as treasurer, ("Committee") of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On January 10, 2013, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe the Committee violated 2 U.S.C. § 434(g). In addition, the Commission voted to dismiss as a matter of prosecutorial discretion the allegation that the Committee violated 2 U.S.C. § 441d. Accordingly, the Commission closed its file in this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

The Act requires that whenever a political committee makes a disbursement for the purpose of financing any communication through any broadcasting station, such communication, if not authorized by a federal candidate or candidate committee, shall clearly state that the communication has been paid for by such political committee and that the communication is not authorized by any candidate or candidate committee. 2 U.S.C. § 441d(a)(3); 11 C.F.R. §§ 110.11(a)(1) and (b)(3). That statement must also include an audio statement that the political committee is responsible for the content of the communication. The statement must be conveyed by a full screen view of a representative of the political committee making the statement in voice-over and must also appear in writing on the screen for at least four seconds. 2 U.S.C. § 441d(d)(2); 11 C.F.R. § 110.11(c)(4). The Commission cautions the Committee to take steps to ensure that its conduct is in compliance with the Act and the Commission's regulations.

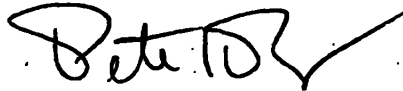
Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

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Michael Corwin, Treasurer
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If you have any questions, please contact Mark Allen, the attorney assigned to this matter,
at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Blumberg", with a large checkmark-like flourish at the end.

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

RESPONDENTS: Independent Source PAC and Michael Corwin MUR 6573
 in his official capacity as treasurer
 Communications Workers of America

FACTUAL AND LEGAL ANALYSIS

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by the Republican Party of New Mexico ("RPNM"), alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by Respondents.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

The Complaint in this matter alleges that the Independent Source PAC ("ISPAC"), an independent expenditure-only political committee, violated the Act by failing to timely and completely disclose on its 48-hour independent expenditure reports its spending on television advertisements critical of New Mexico Governor Susana Martinez. The Complaint also alleges that ISPAC failed to include complete disclaimers on the ads.

More broadly, the Complaint alleges that ISPAC's ads, although purportedly independent expenditures in support of Barack Obama, were in fact intended to influence New Mexico state politics. The Complaint alleges that ISPAC and the Communications Workers of America ("CWA"), a labor organization that contributed \$190,000 to ISPAC, conspired to evade New Mexico's \$5,000 limit on contributions to independent expenditure-only in-state PACs¹ and "defraud" the Commission in violation of 18 U.S.C. §§ 371 and 1001, and requests that the Commission refer this matter to the United States Department of Justice.

¹ N.M. STAT. ANN. § 1-19-34.7(A).

1 ISPAC acknowledges in its response that it made mistakes regarding its independent
2 expenditure reports and disclaimers but states that it is new to the federal process and is working
3 to rectify its mistakes. ISPAC Resp. at 1, 14-16 (May 28, 2012). ISPAC contends that its
4 advertisements at issue are federal independent expenditures because “[k]nocking Susana
5 Martinez out of running for VP provides a clear benefit to the re-election efforts of President
6 Obama and Vice President Biden.” *Id.* at 8. ISPAC and CWA assert in their responses that the
7 Complaint’s conspiracy allegation has no merit because New Mexico’s \$5,000 contribution limit
8 to independent expenditure-only committees no longer applies in the wake of *Citizens United*
9 v. *FEC*, 130 S. Ct. 876 (2010) and *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010).
10 Respondents also note that the RPNM itself succeeded as a plaintiff in federal court litigation in
11 securing an injunction against New Mexico’s \$5,000 limit on contributions to independent
12 expenditure-only committees. *See Republican Party of New Mexico v. King*, 850 F. Supp. 2d
13 1206, 1215 (D.N.M. 2012); ISPAC Resp. at 3-7; CWA Resp. at 2 (June 15, 2012).

14 The Commission concludes that ISPAC’s ads do not expressly advocate the election or
15 defeat of a federal candidate and thus ISPAC was not required to disclose its spending on the ads
16 on independent expenditure reports. For that reason, the Commission finds no reason to believe
17 that ISPAC failed to timely and completely disclose the spending as independent expenditures
18 under 2 U.S.C. § 434(g). The Commission also dismisses, as a matter of prosecutorial
19 discretion, the allegation that ISPAC failed to include proper disclaimers as required by 2 U.S.C.
20 § 441d and cautions ISPAC about the disclaimer requirements of the Act and Commission
21 regulations.

22 In view of the apparent permissibility of CWA’s contributions to ISPAC and the
23 Commission’s lack of jurisdiction over New Mexico contribution limits, the Commission makes

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1 no determinations regarding the Complaint's conspiracy allegations. Instead, the Commission
2 finds no reason to believe that CWA violated the Act in this matter. Finally, the Commission
3 closes the file.

4 **B. Factual Summary.**

5 ISPAC aired the television advertisements at issue during February 2012. The Complaint
6 describes the ads as they appear on YouTube. Compl. at 2-3. ISPAC suggests in its response
7 that it revised the disclaimers on the ads prior to airing them on television. ISPAC Resp. at 2,
8 15-16. The ads are set forth below as they appear on YouTube:²

ISPAC ad	Voiceover	Screen disclaimer
"Education Privatization" ³	Susana Martinez is trying to get rid of neighborhood schools by opening the door to out-of-state profit-making virtual schools. She is playing with our kids' future. Turning them into guinea pigs while sending our scarce educational dollars to enrich out-of-state corporations. New Mexico education dollars need to go our classrooms our teachers and our kids, not to making out-of-state corporations rich. Contact Susana Martinez and tell her you want a real education for your kids. Paid for by Independent Source PAC.	www.independent sourcepac.org Paid for by Independent Source PAC. Not authorized by any candidate or committee.
"Parents' Rights" ⁴	Governor Susana Martinez wants to cut parents out of making decisions about their own child's education. She says parents' rights are "petty status quo." She says no to a compromise that protects parents' rights to choose if their child advances or stays behind. Should a state institution make important decisions about your child's future or should you? Contact Governor Martinez and tell her	www.independent sourcepac.org

² ISPAC states in its response that it aired four ads, not five as listed in the Complaint. ISPAC Resp. at 2, 16. The ads "Parents' Rights" and "Susana Martinez's Attack on Parents' Rights" are nearly identical but are set forth separately here.

³ <http://www.youtube.com/watch?v=kLFAV51oyzk&feature=youtu.be>.

⁴ <http://www.youtube.com/watch?v=UrW0u409d64&feature=youtu.be>.

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	to stop interfering with your rights as parents. Paid for by Independent Source PAC.	
"Susana Martinez's Attack on Parents' Rights"⁵	Governor Susana Martinez wants to cut parents out of making decisions about their own child's education. She says parents' rights are "petty status quo." She refuses any compromise on mandatory retention. So parents will no longer be allowed to choose if their child advances or stays behind. Should a state institution make important decisions about your child's future or should you? Contact Governor Martinez and tell her to stop interfering with your rights as parents. Paid for by Independent Source PAC.	www.independent sourcepac.org
"Driver's License"⁶	Why is Susanna Martinez making New Mexico a more dangerous place? Top law enforcement officials agree, the public is much safer when everyone has a driver's license. Martinez won't compromise to strengthen license regulations for undocumented workers. This means no to helping police find and arrest criminals, no to stopping hit and runs, and no to reducing fraud. She would rather force people into the shadows just to score political points. Susanna Martinez refuses to compromise and we all lose. Paid for by Independent Source PAC.	www.independent sourcepac.org
"Dirty Downs Deal"⁷	Susana Martinez is good to her friends, especially if they ante-up a lot of money to Susana PAC. She says she is against government corruption but that didn't stop her from manipulating the odds to benefit her pals at the Downs at Albuquerque. She got them a billion-dollar contract by muscling her way into the deal, stacking the deck with her cronies and playing it close to the vest by withholding information. Does this sound like a fair deal for New Mexico? For more information go to Independent Source PAC.	www.independent sourcepac.org Paid for by Independent Source PAC. Not authorized by any candidate or committee.

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- 2 ISPAC disclosed spending a total of \$12,884.94 on February 29 and March 14, 2012, for these
- 3 advertisements on Schedule E, Itemized Independent Expenditures, in support of Barack Obama,

⁵ <http://www.youtube.com/watch?v=NROkUPpMc6E&feature=youtu.be>.

⁶ <http://www.youtube.com/watch?v=3FdBlV7sqrM&feature=youtu.be>.

⁷ <http://www.youtube.com/watch?v=MSf323axcws&feature=youtu.be>.

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1 on its 2012 April Quarterly Report filed on April 12, 2012. ISPAC filed a 48-hour independent
2 expenditure report on April 11, 2012, disclosing \$6,442.47 it spent on television ads on
3 March 14, 2012. After the Commission's Reports Analysis Division sent an RFAI to ISPAC
4 dated May 17, 2012, regarding the PAC's apparent failure to file a timely and complete 48-hour
5 independent expenditure report, ISPAC filed an amended 48-hour independent expenditure
6 report on June 12, 2012, disclosing a total of \$12,884.94 that it spent on the television ads, an
7 amount that included the \$6,442.47 originally disclosed on ISPAC's initial April 11 independent
8 expenditure report.

9 C. Legal Analysis

10 1. Independent Expenditure Reporting

11 The Act defines "independent expenditure" as an expenditure by a person expressly
12 advocating the election or defeat of a clearly identified federal candidate that is not made in
13 concert or cooperation with or at the request or suggestion of such candidate, the candidate's
14 authorized political committee, or their agents, or a political party committee or its agents.
15 2 U.S.C. § 431(17). The Act defines "candidate" as an individual who seeks nomination for
16 election, or election, to federal office. 2 U.S.C. § 431(2). Under the Commission's regulations,
17 a communication is "expressly advocating" when it uses phrases such as "vote for the President,"
18 "re-elect your Congressman," or "Smith for Congress," or uses campaign slogans or individual
19 words, "which in context can have no other reasonable meaning than to urge the election or
20 defeat of one or more clearly identified candidate(s)" 11 C.F.R. § 100.22(a); see *Buckley*
21 v. *Valeo*, 424 U.S. 1, 44 n.52 (1976); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238,
22 249 (1986). The second part of this regulation encompasses a communication that, when taken
23 as a whole and with limited reference to external events, "could only be interpreted by a

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1 reasonable person as containing advocacy of the election or defeat of one or more clearly
2 identified candidate(s) because" it contains an "electoral portion" that is "unmistakable,
3 unambiguous, and suggestive of only one meaning" and "reasonable minds could not differ as to
4 whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or
5 encourages some other kind of action." 11 C.F.R. § 100.22(b). A person, including a political
6 committee, who makes independent expenditures aggregating \$10,000 or more at any time up to
7 and including the 20th day before the date of an election shall file a report describing the
8 expenditures within 48 hours. 2 U.S.C. § 434(g)(2)(A).

9 ISPAC's advertisements, however, do not expressly advocate the election or defeat of a
10 candidate for federal office. In fact, the ads do not contain any reference to a clearly identified
11 federal candidate. The ads clearly identify New Mexico Governor Susana Martinez, but she is
12 not a candidate for federal office. The fact that Mitt Romney was reportedly considering her as a
13 possible choice for Vice President does not make her a candidate under 2 U.S.C. § 431(2).⁸
14 Accordingly, ISPAC was not required to disclose the costs of the ads as independent
15 expenditures, and its failure to do so is not a violation of the Act.⁹ Therefore, the Commission
16 finds no reason to believe that ISPAC violated 2 U.S.C. § 434(g).

⁸ In Advisory Opinion 2006-30 (ActBlue), the Commission determined that ActBlue could solicit and receive contributions earmarked for clearly identified prospective candidates and postpone forwarding the contributions until a prospective candidate had become a candidate and registered a campaign committee. The opinion notes that prospective candidates would become "candidates" and have to report the contributions only when they registered a campaign committee or met the statutory threshold for candidates established in the Act and Commission regulations. In this matter, there is no suggestion that Governor Martinez took any step toward becoming a candidate for federal office.

⁹ Although ISPAC filed and subsequently amended 48-hour notices with the Commission concerning these advertisements, they were not obligated to do so.

2. Disclaimers

The Act requires that whenever a political committee makes a disbursement for the purpose of financing any communication through any broadcasting station, such communication, if not authorized by a federal candidate or candidate committee, shall clearly state that the communication has been paid for by such political committee and that the communication is not authorized by any candidate or candidate committee. 2 U.S.C. § 441d(a)(3); 11 C.F.R. §§ 110.11(a)(1) and (b)(3). That statement must also include an audio statement that the political committee is responsible for the content of the communication. The statement must be conveyed by a full screen view of a representative of the political committee making the statement in voice-over and must also appear in writing on the screen for at least four seconds. 2 U.S.C. § 441d(d)(2); 11 C.F.R. § 110.11(c)(4).

ISPAC states in its response that its advertisements on education (“Parents’ Rights” and “Susana Martinez’s Attacks on Parents’ Rights”) and public corruption (“Dirty Downs Deal”) “comply fully with the FEC requirements” ISPAC Resp. at 16. Without access to the ads as aired, the Commission cannot assess this claim. However, ISPAC acknowledges that its other advertisements “may fall short of the written disclosures” and that “[i]t appears that in the rush to get them on air that we did not go back and rework the paid by panel.” *Id.* ISPAC’s treasurer Michael Corwin states that he accepts responsibility for the oversight. *Id.*

All five of ISPAC’s advertisements as they appear on YouTube state that ISPAC paid for the ads. None of the ads as they appear on YouTube, however, contain complete disclaimers as required by the Act and Commission regulations. For example, none of the ads contain a full screen view of an ISPAC representative stating that ISPAC is responsible for the content of the ads. However, given that all of the ads contain identifying information, it appears that the public

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1 would not have been confused or misled as to who paid for these ads. In addition, ISPAC's
2 disclosure reports include itemized disbursements for the ads at issue and the ads' total cost was
3 less than \$13,000. Under these circumstances, the Commission dismisses, as a matter of
4 prosecutorial discretion, the allegation that ISPAC violated 2 U.S.C. § 441d and cautions ISPAC
5 about the disclaimer requirements of the Act and Commission regulations. *See Heckler v.*
6 *Chaney*, 470 U.S. 821 (1985).

7 3. Communications Workers of America

8 The Complaint alleges that CWA conspired with ISPAC to evade New Mexico
9 contribution limits. Compl. at 1-2, 5. CWA asserts in its response that it could not have
10 conspired with ISPAC to evade New Mexico contribution limits because, "as a constitutional
11 matter, there could be no enforceable amount limitation (or source restriction relevant to CWA)
12 on a contribution to a New Mexico-registered political committee that, like ISPAC, does not
13 itself contribute to New Mexico candidates, party committees or other New Mexico-registered
14 contributing state political committees." CWA Resp. at 2 (emphasis in original); *see Republican*
15 *Party of New Mexico v. King*, 850 F. Supp. 2d 1206, 1215 (D.N.M. 2012). In any event, the
16 Commission has no jurisdiction over New Mexico contribution limits. Accordingly, the
17 Commission finds no reason to believe that CWA violated the Act in this matter. Finally, the
18 Commission closes the file.

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